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or Degrading Treatment
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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

MEXICO*

[28 May 1996]

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* This report contains the additional information requested by the Committee against Torture at its ninth session, following its consideration of the second periodic report of Mexico (CAT/C/17/Add.3) on 17 November 1992 (see docs. CAT/C/SR.130 and 131); see also the Annual Report of the Committee against Torture, Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44, paras. 208-229).

Introduction

1. The second periodic report of the Government of Mexico contained information up to June 1992 and referred, in particular, to the establishment, by a Decree of 6 June 1990, of the National Human Rights Commission (CNDH) and the approval, in December 1991, of the new Federal Act to Prevent and Punish Torture.

2. The present report contains information provided by various bodies concerning the period between May 1992 and December 1995 and relating especially to the activities of the CNDH, the Office of the Attorney-General of the Republic and the implementation of the Federal Act to Prevent and Punish Torture.

3. During the period covered by the report, human rights commissions were established in all the legislatures of the Republic under the Decree of 28 January 1992, which added a paragraph (b) to article 102 of the Constitution, empowering federal and State congresses to establish bodies for the protection of human rights, with constitutional status, in their respective areas of competence.

4. As will be recalled, when the first report of the Government of Mexico was submitted to the Committee against Torture, all complaints of torture were considered by the National Commission. Currently, when complaints of torture involve federal authorities, they are dealt with by the National Commission, and when they involve State authorities, they are first dealt with by the State commissions, although the National Commission may exercise its power to consider them.

I. LEGISLATIVE MEASURES

5. Under the terms of the Federal Act to Prevent and Punish Torture, the offence of torture occurs when a public servant inflicts severe pain or suffering on another person, and by that simple fact, regardless of the results or consequences of the act, he deserves the penalty established for this offence. For this reason, when a public servant commits torture, generally physical torture, he may, in addition to that offence, also have committed other offences, such as threats, injuries or even causing death, and when this happens, it is known legally as a combination of offences.

6. In practice, article 64 of the Federal Penal Code, and article 25 of the Penal Code for the Federal District, state that in this category of offence, "the penalty for the most serious offence shall be applied, and may be increased to up to one half more than the maximum sentence, although it may not exceed the maximum penalty, which is 50 years' imprisonment".

7. This means that public servants who have committed the offence of torture are tried and punished in accordance with the above-mentioned rules and not solely for torture, but also for causing serious injuries or for homicide.

8. During the period covered by this report, amendments to a number of enactments were introduced and subsequently incorporated into federal law

in January 1994, with the result that the Federal Government was able to assume direct responsibility for the reparation of damage caused by the wilful misconduct of public servants, including moral damage.

9. With regard to the national law applicable to the restitution, compensation and rehabilitation of victims of grave violations of human rights, on 10 January 1994 amendments to the following ordinances were published in the Diario oficial de la Federación (annex I): 1/

(a) Penal Code for the Federal District in respect of Ordinary Law and for the entire Republic in respect of Federal Law;

(b) Federal and Federal District Codes of Penal Procedure;

(c) Amparo Act;

(d) International Extradiction Act;

(e) Civil Code for the Federal District in respect of Ordinary Law and for the Entire Republic in respect of Federal Law;

(f) Federal Act on the Responsibilities of Public Servants;

(g) Tribunal Fiscal of the Federation Organization Act;

(h) Federal District Administrative Court Act;

(i) Federal Act to Prevent and Punish Torture;

(j) Federal Budget, Accounts and Public Expenditure Act;

(k) Judiciary of the Federation Organization Act.

10. These amendments, which are concerned with the reparation of damage resulting from the commission of offences, state that such reparation includes compensation for material and moral damage, including payment for any medical treatment needed as a result of the offence to enable the victim to regain his health.

11. It has also been provided that the State must accept liability in solidum for damage resulting from wilful misconduct of public servants in the performance of their duties and, secondary liability when the misconduct involved only imprudence; a specific line in the State public expenditure budget has been provided for this purpose.

12. Furthermore, where the damage is caused by acts not deemed to constitute offences under the Civil Code, the State is made liable for the reparation of damage caused by public servants in the performance of their duties. As a general rule, State liability is secondary, except in the case of wilful misconduct, where it is in solidum. In this regard, State liability arises only in cases where the public servant who is directly responsible does not have sufficient means to cover his own liability.

13. With respect to administrative liability, the procedure for obtaining reparation of damage has been streamlined, in terms of both time-limits and formalities. Prior to the amendment the amount of time required, and the excessive bureaucratic formalities, made it virtually impossible to secure reparation. In addition, judicial procedures have been established to make reparation effective in cases where the public servant refuses to comply.

14. The reform establishing the liability of the State and regulating the means of exercising recognized rights, which is even more important, has a preventive aspect with regard to torture. When the authorities are obliged to provide reparation for damages, as the CNDH pointed out in recent recommendations, such as Recommendation 98/95, they become more aware of the need to introduce efficient monitoring machinery so that public servants under their authority observe the law in performing their duties, and there is also a greater incentive to provide staff training in human rights.

15. Recommendation 98/95 (annex II) 1/ concerns the disturbances of 3-4 May 1995 at the Guadalajara Social Rehabilitation Centre, when State and federal police beat and mistreated inmates, taking seven lives; it was sent to the Governor of the State of Jalisco and the Attorney-General of the Republic.

16. The Attorney-General, in applying article 2 of the Convention against Torture - which requires the States parties to take legislative, administrative, judicial or other measures to prevent acts of torture - has always endeavoured to ensure that public servants comply with the obligations under the procedural statute and with the commitments under the Convention and other international instruments, such as the Inter-American Convention to Prevent and Punish Torture.

17. Between June 1992 and December 1995, the Office of the Attorney-General of the Republic published the following legal ordinances which regulate the conduct of public servants in that Office in defending human rights and combating impunity:

(a) Regulations of the Office of the Attorney-General of the Republic Organization Act. In 1993, the General Directorate for the Protection of Human Rights was established within that Office, with the specific functions enumerated in article 29 of the Regulations, consisting of monitoring, protection and promotion of human rights, dissemination of the values that must form the basis of the conduct of public servants responsible for securing justice, so as to avoid, through preventive action, the commission of offences such as torture;

(b) Code of Professional Ethics for federal agents of the Public Prosecutor's Department and the judicial police, published on 24 March 1993;

(c) Regulations of the Federal Judicial Police career, published on the same date;

(d) Circular 010/93 of 6 April 1993, issued by the Attorney-General of the Republic establishing the CNDH Recommendation Follow-up Unit. Its purpose is to respond to the requirements of the CNDH, especially concerning

complaints about the conduct of preliminary investigations in which a particular offence is presumed to have been committed, as would be the case for torture and other serious crimes;

(e) Institutional Code of Conduct and Ethics, adopted in 1995 (annex III); 1/

(f) Definition of the mandate of the Office of the Attorney-General of the Republic, adopted in September 1995:

> "The Office of the Attorney-General of the Republic, which includes the Public Prosecutor's Department, is a fundamental organ of the federal justice system. On behalf of individuals, society and the State it promotes and monitors compliance with the Constitution and ensures that justice is done within its areas of competence. It also participates in crime prevention activities to guarantee public safety;
>
> This mandate must be exercised in strict compliance with the principles of the Constitution and the laws for this implementation, as well as with the full observance of human rights, prerequisites for the rule of law.
>
> The activities of the Federal Public Prosecutor's Department and its subsidiary offices shall be oriented towards, and governed by, the principles of honesty, professionalism, impartiality, loyalty and efficiency, good faith and humanity."

(g) Circular No. 001/95 of 10 March 1995. This provides that all communications which any public servant of the Office of the Attorney-General of the Republic requires to have with the CNDH must be effected through the Internal Control Unit, which will be the only point of contact for communication with and proceedings before that body.

II. STATISTICS ON COMPLAINTS CONCERNING AND PENALTIES FOR THE OFFENCE OF TORTURE

18. In the period between May 1992 and May 1993, torture was the seventh most frequently cited form of presumed violations of human rights, according to the CNDH, accounting for 246 cases, or 2.8 per cent, of the total of 8,793 complaints received by that body; the number of complaints of torture was down 43 per cent from the previous year.

19. In the fourth year of its existence, from May 1993 to May 1994, the CNDH received 141 complaints of torture, which represented 1.6 per cent of the 8,804 complaints submitted for presumed violations of human rights making it the tenth commonest form of violation.

20. From May 1994 to May 1995, complaints of torture fell by 68.1 per cent compared to the previous year. Torture was alleged by complainants in 46 cases received during that period and classified as presumed violations of human rights.

21. As to the penalties applied for the offence of torture, since 1992 a total of 37 preliminary investigations of torture have been initiated as follows:

Total number accused, 1992	18
Total number accused, 1993	8
Total number accused, 1994	0
Total number accused, 1995	10

22. In addition, the General Directorate for Follow-up on CNDH Recommendation, part of the Office of the Attorney-General of the Republic, has presented 31 preliminary investigations into the possible crime of torture to the district judges, as follows:

Total number accused, 1992	28
Total number accused, 1993	0
Total number accused, 1994	3
Total number accused, 1995	0

23. The CNDH is aware of criminal action having been brought against 53 public servants for the offence of torture and also knows of 14 cases of homicide arising from torture. In two cases, the trial judge pronounced a verdict of guilty of torture and in five cases a verdict of homicide as a consequence of torture. These cases are the following:

Criminal proceedings for the offence of torture

1. In recommendation 73/91, in the case of Martín Arroyo Luna and others, criminal action was brought against Gustavo Castrejón Aguilar (annex IV); 1/

2. In recommendation 42/92, in the case of William Darío Kerguelen Pinilla, criminal action was brought against Mario Santander Embriz (annex V); 1/

Criminal proceedings for the offence of homicide as a consequence of torture

1. In recommendation 3/90, in the case of Jorge Argáez Pérez, criminal action was brought against Alejandro San Pedro González (annex VI); 1/

2. In recommendation 29/90, in the case of the People of Aguililla, Michoacán, criminal action was brought against Raymundo Gutiérrez Jiménez (annex VII); 1/

3. In recommendation 1/91, in the case of Pedro and Felipe de Jesús Yescas Martínez, criminal action was brought against Omar Olguín Alpízar (annex VIII); 1/

4. In recommendation 15/91, in the case of Ricardo López Juárez, criminal action was brought against Enrique Alvarez Palacios (annex IX); 1/

5. In recommendation 50/91, in the case of José del Carmen Llergo Totosaus, criminal action was brought against José Rojas Garrido (annex X). 1/

24. Furthermore, in seven cases the jurisdictional proceedings reached no conclusions; in 13 cases, the respective arrest orders were not carried out; and 25 arrest orders were rejected or cancelled by judges and a formal arrest warrant revoked.

25. Of the 1,022 recommendations issued by the CNDH from its establishment until December 1995, torture was proven in 105 recommendations and on those occasions the illegal action of the offending public servants was publicly disclosed along with their names; it was also recommended that the appropriate administrative and criminal proceedings should be initiated. Those recommendations were based not only on national legislation but also on the covenants and treaties ratified by the Government of Mexico, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26. Of the 105 recommendations in which torture was proven, 72 are noteworthy for having been fully implemented; 32, partially implemented; 2 remain pending, as they were issued only recently; and only 1 has not been accepted by the Chief Justice of the Supreme Court of Justice of the State of Sinaloa.

27. The decrease in cases of torture should be viewed in the light of both legislative reforms and the increase in the number of training courses, which have resulted in qualitative progress in the manner in which torture is dealt with; there is more emphasis on discovering torture even when there are no physical traces, since torturers avoid leaving any trace. Much progress has been made in training on how to conduct expert examinations to prove psychological torture.

28. Above and beyond the mere numbers, Mexico is continuing its efforts to ensure that legal and political penalties for those who commit the offence of torture are applied in full. However, the authorities still need to be made more aware of the importance of penalizing torture vigorously and in accordance with the law.

29. Two basic issues come together: the impact of the CNDH's recommendations on all sectors of society, and the political will of the authorities. Much remains to be done in both respects, but there has already been a major change in Mexican public life. Respect for human rights is slowly acquiring greater importance in our institutions, especially with regard to securing justice.

30. The Government of Mexico considers it possible to carry out, comprehensively and responsibly, the functions of enduring public security and combating crime, while fully respecting individual guarantees. Even though the sort of culture which fosters respect for individual guarantees is still fragile, the rule of law has been strengthened and the development of a climate of respect for human rights is under way.

III. ACTIVITIES OF THE NATIONAL HUMAN RIGHTS COMMISSION

31. Although for reasons of competence it is now the local commissions which initially hear complaints of torture committed by State authorities, the National Commission has the power to review in second instance, in addition to which it may exercise its power to examine in the following cases: (a) cases which involve either authorities or public servants of the Federation, as well as of the federative entities or municipalities; (b) by cases of appeals complaining against, or challenging, proceedings or resolutions of the State Human Rights Commissions, as well as information furnished by local authorities on implementation of the Commissions' recommendations; (c) cases where the power to examine is exercised because the respective State commission is inactive, or cases of a presumed violation which, because of its importance, goes above and beyond the interest of the federative entity and affects public opinion and, in such cases, provided the matter is particularly grave.

32. It is important to note that in federal cases, as happens in cases of torture, there is no time-limit for the submission of complaints, which strengthens the systematic struggle against impunity and guarantees that no act of torture will go undenounced simply because of the passage of time. The National Human Rights Commission Organization Act should be mentioned in this regard, as it sets the precedent for the imprescriptibility of the submission of complaints, and defines torture as a crime against humanity.

Training programme to create a climate of respect for human rights

33. In order to strengthen respect for human rights, the National Commission trains all the security services and the armed forces. In the first instance, the training programmes are focused on federal public servants within the Commission's sphere of competence; however, in matters of prevention and of promotion of a human rights culture, the Commission has also been training municipal and State officials, in coordination with the respective State Commissions, and involving universities and non-governmental organizations.

34. Currently, training programmes are focused on the following personnel responsible for public or national security: police academy students, preventive and municipal police, judicial police officers from the States and Public Prosecutor's Departments of ordinary law, guards, immigration officers, federal highway police, and staff assigned to the Office of the Attorney-General of the Republic, including administrators, Federal Judicial Police and officials of the federal Public Prosector's Department.

35. Police academy. An awareness-raising campaign is now under way, aimed at reaching all the police officers of all the State and federal agencies. It began as a pilot programme at the police academy of the State of Aguascalientes, with a training model that makes it possible to include not just human rights, but all related subjects, in the curriculum. For example, restraint techniques involve not only a knowledge of the techniques of subjugation and manoeuvre, both individual and collective, use of firearms and development of physical strength, but also a knowledge of the implications of the use of force in time, technique and proportionality These techniques must be learned at the same time as other police techniques, and not as a desk

course which has nothing to do with reality. Prior to the current programme, the CNDH had prepared a police guide and a manual which were widely disseminated among the police forces.

36. Municipal police and preventive police. The training of preventive and municipal police on active duty has begun in the State of Nayarit, to familiarize the officers with the basic concepts of respect for human rights and to teach them the implications of, and restrictions on, their actions.

37. State judicial police officers. During the period covered by this report, training programmes were carried out in conjunction with the State human rights commissions and the offices of the Attorney-General in the States of Hidalgo, Oaxaca, San Luis Potosí, Chihuahua and Tamaulipas, as well as in the Federal District. The same will be done in the States of Veracruz, Yucatán and Quintana Roo. Between May and December 1995, 342 officials of the Public Prosecutor's Department and 693 judicial police officers were trained. This training basically revolves around the use of force and the problem of arbitrary detention, as well as the procedures to be followed by personnel in the performance of their duties.

38. Guards. Guards in the State of Querétaro are being retrained through a course entitled, "How human rights work in the CERESO", which answers such basic questions as "which of my rights has been violated within the CERESO (Social Rehabilitation Centre), and which of the detainees' rights might I someday violate?"; Seventy persons have participated to date. This programme will be given a major boost, in collaboration with non-governmental organizations and the prisons themselves; it will also deal with the specific problems of indigenous people and the situation of women detainees. Training courses will also be given in the Islas Marias Federal Penal Settlement.

39. Immigration officers. In the current stage of the training provided for immigration officers, a new programme has developed as a result of the report published by the CNDH in April 1995, Southern border: report on violations of the human rights of immigrants. In the Chiapan cities of Tapachul and Comitán, 102 immigration officers have been trained, out of a total of 230 immigration officers in the States of Chiapas, Veracruz, Tabasco and Oaxaca. In addition to supporting instruction on the findings and suggestions of that report, the training process is aimed at diagnosing the fundamental rights to be safeguarded by these offices in performing their duties and at preparing a handbook for undocumented persons in Mexico, to make them aware of their rights and of the civilized treatment to which they are entitled in Mexican territory.

40. Federal highway police. In the State of Nayarit, the federal highway police training programme began with a workshop in which some 800 persons participated and which consisted of an initial awareness-raising session on two subjects, the dignity with which they must be treated as subjects of human rights, and the civilized treatment which must in turn be given to the population as a basic condition for the respect of human rights.

41. Federal Judicial Police officers. An awareness-raising programme has now been completed, in which 1,975 staff members from the Office of the Attorney-General of the Republic throughout the country participated as

follows: 579 federal officers from the Public Prosecutor's Department; 746 Federal Judicial Police officers; and 650 administrative staff. This training was given to staff on active duty, in their respective police stations. The initial awareness-raising stage revolved around three basic rights - the right to life, dignity and liberty - each analysed from two perspectives: that of the public servant as a subject of law, and in his dealings with the population, in carrying out his duties as a member of the Federal Judicial Police. In each session, an effort was made to unify the criteria used in the conceptualization, ethics and axioms underlying these basic principles with the legal form of expression and the juridical consequence, in order to remedy the lack of specific information on such subjects as torture, arbitrary detentions, the use of firearms and national and international legislation ratified by Mexico. Furthermore, public servants' requests that publications and information on human rights and topics requiring special attention should be sent to and distributed at all the State police stations of the Office of the Attorney-General of the Republic have been met; seminars have been organized with the participation of the CNDH and the training institute of the Office of the Attorney-General.

42. Military academy. The CNDH has begun training courses on human rights as part of the training of personnel of the General Staff of the Armed Forces and the Mexican Air Force, as well as of managerial and teaching staff, and has also initiated special courses at the military academy, all for high-ranking officers in the Mexican army and foreign scholarship holders. The curriculum includes an analysis of philosophy and ethics movements, a historical overview of the conceptual and legal development of human rights at the global level, the Mexican Constitution and international law, humanitarian law and Mexico's military legislation, and instruments for the protection of human rights, with special emphasis on the role of the Ombudsman and the procedures of the CNDH. During 1995, 440 high-ranking officials participated in these courses.

IV. ACTIVITIES OF THE OFFICE OF THE ATTORNEY-GENERAL OF THE REPUBLIC

43. The Office of the Attorney-General of the Republic, under the provisions of article 10 of the Convention, has undertaken several internal activities to disseminate, teach and promote human rights through training courses, preventive programmes for vulnerable groups, publications and the production of materials. This activity, which has been continuously repeated, has contributed to a significant reduction in the number of complaints of torture, as reflected in the CNDH's latest report.

44. During 1995, the Office of the Attorney-General of the Republic, through the Internal Control Unit, carried out various activities aimed not only at punishing public servants who act outside the law, but also at establishing an ongoing human rights training programme, in order to train its own public servants and make the administration of justice a more efficient and law-abiding undertaking in keeping with its responsibility to society.

(a) From March to November 1995, training took place for 31 police stations of the Office of the Attorney-General of the Republic in the interior

of Mexico, with 2,367 public servants participating, including 686 public prosecutors; 913 judicial police officers; and 768 administrative staff, in 156 workshops of at least 4 hours each;

(b) From October to December 1995, workshops were organized for the staff of the Federal District, with 74 working session, attended by 1,657 public servants, of whom 422 were public prosecutors; 382 judicial police officers; and 853 administrative staff;

(c) Overall, from March to December 1995, 230 workshops were held for 4,024 public servants, including 1,108 public prosecutors; 1,295 judicial police officers; and 1,621 administrative staff.

45. The Office of the Attorney-General has also recently compiled a list of the national and international legal instruments in force in Mexico on the protection of human rights, with a view to publishing a volume containing all the texts for distribution to officers of the Federal Public Prosecutor's Department and to all the Office's public servants as material to consult in carrying out their duties in strict compliance with the law, always avoiding any acts which might be considered to be in violation of fundamental human rights. The texts are as follows:

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Inter-American Convention to Prevent and Punish Torture;

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment;

Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment;

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

1992 Federal Act to Prevent and Punish Torture.

46. This demonstrates the progress made by the Mexican State in fulfilling its commitments under the Convention against Torture, although it must be recognized that much remains to be done, since the objective is the total elimination of torture.

Note

1/ The annexes mentioned in the report may be consulted in the files of the United Nations Centre for Human Rights.